IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.99 OF 2005

Mohan Mahadev Chavan ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.Raja Thakare with Mr.M.P.Dalvi &

Mr.A.M.Chimalkar for Applicant.

Mr.K.V.Saste, A.P.P. for Respondent.

Mr.Harshad Bhadbhade for Complainant.

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CORAM: A.M.KHANWILKAR, J.

APRIL 13, 2005.

P.C.

1. Heard Counsel for the Applicant.

2. I see no infirmity in the approach adopted by the Court below in rejecting the Application made for recall of the witnesses, for good reasons recorded in the impugned order. No exception can be taken to the reasons which have weighed with the

lower Court in rejecting the Application for recall of witnesses, as filed by the Applicant.

3. To get over this position, Counsel for the Applicant contends that no prejudice will be caused to the prosecution if the Application was to be allowed, inasmuch as the Applicant is already in jail, coupled with the fact that the Applicant is facing trial for capital punishment.

4. In my opinion, merely because no prejudice will be caused to the prosecution, by itself, cannot be the ground for exercising discretionary power available to the Trial Court. As rightly observed by the Trial Court in the present case, it is not the grievance of the Applicant that the Applicant was not represented by able Advocate. Mere change of Advocate cannot be the basis to permit recall of witness merely because the newly appointed Advocate has different perception about the case on hand and the nature of cross-examination conducted by the earlier Advocate.

5. Counsel for the Applicant had placed reliance on the order of this Court in the case of Sunil Vitthal Chikhalkar & Ors. vs. The State of Maharashtra in Criminal Revision Application No.369 of 2003 decided on September 24, 2003. That decision proceeds on the premise that the Applicants therein were not having proper legal assistance, as the earlier Advocate had no experience of criminal matters. In other words, the view taken by this Court in the aforesaid case is on the facts of that case.

6. Counsel for the Applicant also placed reliance on the decision of the Apex Court in the case of **Rajendra Prasad vs. Narcotic Cell reported in (1999) 6 SCC 110**. The Apex Court was considering the question as to whether witness can be recalled to fill up lacuna in the prosecution case. In the context, it has considered the matter as to the distinction between oversight or mistakes during conducting the case, can be considered as lacuna and can be corrected.

7. In the present case, the Court below has,

after considering the material on record, taken the view that there is nothing on record to show that the earlier Advocate had no opportunity or had conducted the matter inappropriately. In that backdrop, it has observed that mere change of Advocate, at the later stage of the trial, cannot be the basis to recall the witnesses. No fault can be found with the said view. Hence, dismissed.

A.M.KHANWILKAR, J.